

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIEL T CASTO
Claimant

DOLGENCORP LLC
DOLLAR GENERAL
Employer

APPEAL 14A-UI-05384-H2T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/06/14
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated May 15, 2014, (reference 02) that found the claimant not able to and available for work. Notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on June 16, 2014. A review of the Appeals Bureau's conference call system shows the claimant/appellant called in to provide his telephone number where he could be reached for the hearing on June 10, 2014. At that time he was specifically told that if he did not hear from the administrative law judge by five minutes after the start time of the hearing he was to call to find out why he had not been reached for the hearing. The administrative law judge called the claimant and left him a message to call in prior to 2:15 p.m. if he wanted to participate in the hearing. The administrative law judge then kept the record open until after 2:30 p.m. when it was closed due to the claimant's failure to participate. The claimant/appellant called at 2 58 p.m. in response to the administrative law judge's (ALJ) message. He knew that the hearing was to take place at 2:00 p.m. but since he was without power where he is staying he took his cellular telephone to a neighbor's house to charge. He expected the neighbor to come and tell him that his phone had rung. The claimant did not have any other way to tell time other than his cell phone. He chose not to wait at the neighbor's house while it charged. He was busy doing other things, despite knowing that his hearing was to take place.

ISSUES:

Should the hearing record be reopened?
Should the appeal be dismissed based upon the appellant not participating in the hearing?

FINDINGS OF FACT:

The claimant was properly notified of the scheduled hearing for this appeal. The claimant was not available at the telephone number provided for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The claimant knew he needed to charge his phone. He did not call to ask for continuance or to alert the administrative law judge that he needed to charge his phone. The claimant could have

opted to be with his cellular phone while it charged. The claimant has not established good cause to reopen the record.

The representative's decision concluded that the claimant was not eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the ALJ may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The statute further states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the ALJ shall vacate the decision and conduct another hearing.

Agency rule Iowa Admin. Code r. 871-26.14(7) provides that if the appealing party has not responded to a notice of telephone hearing by providing the Appeals Bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the ALJ may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code § 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing and shows good cause for reopening the hearing. The rule further states that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. Iowa Admin. Code r. 871-26.14(7)c.

The appellant appealed the unemployment insurance decision but failed to participate in the hearing. The appellant has not established emergency or other good-cause reason for failing to be available for the hearing at the number provided in response to the hearing notice instructions and the record shall not be reopened. The appellant has therefore defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the decision remains in force and effect. Benefits are denied.

DECISION:

The unemployment insurance decision dated May 15, 2014 (reference 02), is affirmed. The record shall not be reopened. The decision denying benefits remains in effect.

Teresa K. Hillary
Administrative Law Judge
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Decision Dated and Mailed

tkh/pjs